

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Linda S. Wells-Rider, :
 :
 Plaintiff, :
 :
 v. : Case No. 2:10-cv-333
 :
 Westfield Group, et al., : JUDGE GRAHAM
 :
 Defendants. :

ORDER

Plaintiff filed this action on April 16, 2010. Before any defendant moved or pleaded in response to the complaint, she moved to dismiss the case under Fed.R.Civ.P. 41(a). The defendants have now answered, but there has been no response filed to the motion to dismiss.

Rule 41(a)(1)(A)(i) permits a plaintiff to dismiss an action without the need for a court order simply by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment" Thus, plaintiff could have accomplished the dismissal of her case herself without filing a motion. This ability to dismiss by notice has been described as "an absolute right to dismiss a lawsuit before the defendant has filed an answer or summary judgment motion." Carter v. United States, 547 F.2d 258, 259 (5th Cir. 1977). In fact, when the plaintiff has the right to file a notice of dismissal under Rule 41(a)(1)(A)(i) but files a motion instead, some courts will deem the motion to dismiss (especially if filed by a *pro se* plaintiff) as such a notice. See, e.g., Little v. Trott & Trott, P.C., 2009 WL 4827441, *1 (D.D.C. December 14, 2009).

Even if the Court does not construe plaintiff's notice that way, her motion relies on Rule 41(a) and the right of dismissal

it contains. Consequently, plaintiff's motion to dismiss (#7) is GRANTED. This action is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

Date: June 4, 2010

S/James L. Graham
James L. Graham
United States District Judge